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At its meeting held on 22-23 July 1998, the Council addressed the request by ICAO for observer status. In this context, a request was made that ICAO provide written information on its activities in matters relevant to the work of the Council. This paper has been provided by ICAO in response to that request.

ICAO ACTIVITIES IN THE ECONOMIC REGULATION OF INTERNATIONAL AIR TRANSPORT

(Presented by the ICAO Secretariat)

I. INTRODUCTION

1. This paper describes the role and activities of the International Civil Aviation Organization (ICAO) in the economic regulation of international air transport for both market access and the three activities included in the Annex on Air Transport Services in the General Agreement on Trade in Services (GATS). It also provides a short overview of recent developments in this sector and some ICAO guidance material of relevance to the WTO's review of the GATS.

II. REGULATORY ARRANGEMENTS AND THE ROLE OF ICAO

2. The constitutional role and responsibilities of ICAO, and the economic regulatory structures and arrangements in international air transport, derive from two aspects of the Convention on International Civil Aviation (Chicago Convention). These are the principle of State sovereignty over its airspace and the requirement for authorization to operate commercially into another State. Consequently market access in this sector for the past 50 years has been primarily governed by bilateral air services agreements between States (such agreements now number several thousand), most of which are predicated on reciprocity and the balancing of benefits or opportunities. In more recent times five sub-regional agreements (in Europe, the Caribbean, South America and Africa) have emerged for market access among groups of States. Under this regime aviation has experienced strong, relatively stable and rapid expansion, usually with scheduled traffic (in tonne-kilometers performed) increasing at about twice the average rate of growth in global Gross Domestic Product. By its very nature, and this record of orderly growth, air transport has facilitated, and contributed significantly and in a pivotal way, to global economic trade and development.

3. As a corollary to these legal structures governing market access, ICAO's role in the economic regulatory field is essentially recommendatory. Nevertheless it is a function which has intensified in recent times as the 185 Contracting States of ICAO have used the Organization both as a forum for considering future regulatory arrangements for international air transport and an institutional framework for developing regulatory guidance at the global level which is incorporated into the regulatory structure primarily via bilateral and regional air service agreements. Under ICAO's auspices world-wide conferences and specialized groups of experts, particularly since the early 1990's, have produced, for optional use by States, material on many economic regulatory issues, including participation and market access, that are dealt with in their bilateral and regional relationships. With respect to ICAO's role in this field the recent ICAO Assembly concluded that ICAO should take a more active role in the development of economic policy guidance for the regulation of international air transport.

III. DEVELOPMENTS IN INTERNATIONAL AIR TRANSPORT

4. Like other service sectors air transport has experienced the opportunities, risks and consequences brought about by the forces of globalization, privatization and liberalization. The bilateral/regional market access structure has shown an increasing though uneven trend towards liberalized arrangements, practices and regulatory approaches. At the same time the global air transport industry has adjusted rapidly to the pressures for change and greater competitiveness. The result today is a commercial, operating and regulatory environment which, while currently in a state of transition and adaptation, also enables greater flexibility and restructuring in the market place, as well as an increasing reliance on market forces.

IV. ICAO ACTIVITIES RELATED TO MARKET ACCESS

5. Based on the work of the ICAO World-wide Air Transport Conference in 1994, and subsequent follow-up efforts, ICAO's Council has developed guidance for the Organization's Contracting States on certain key aspects of market access, such as ensuring fair competition and participation in international air transport, broadened airline ownership and control criteria for the use of market access and more competitive ground handling arrangements. States have also used earlier ICAO guidance developed in the 1980's, for example, on tariffs and capacity to progressively liberalize these aspects of their bilateral and regional air service relationships.

6. **Fair competition and participation.** In 1989 ICAO issued guidance on avoiding conflicts over the application of competition law to air transport which focussed on prior notification and consultation with the State(s) concerned. In 1996 ICAO developed a two-part mechanism for fair competition in bilateral or regional air transport relationships that are being liberalized. In the first part the parties to a dispute identify, with some examples given in the Recommendation, certain signals of unfair competitive behaviour or abuse of dominant position in the market place. The second part is a dispute settlement process involving an objective opinion on the merits by an expert or experts selected from a roster of qualified individuals maintained by ICAO followed by a negotiated settlement by the Parties themselves.

7. As regards effective and sustained participation for States moving toward the liberalization of international air transport, in 1996 ICAO recommended specific participation measures in the areas of capacity, tariff and market access. The most popular of these measures are gradual, negotiated increases in capacity, number of airlines, and points served.

8. On the specific question of participation by developing countries in a more competitive air transport environment, the ICAO Secretariat produced a study in 1997 containing potential preferential measures for possible use by States. These preferential measures were distinguished from the above mentioned participation measures by being non-reciprocal; for example, a waiver of ownership and control requirements for airlines of developing countries. The recent ICAO Assembly noted the study and urged States to give special consideration in their air transport relationships to the interests and needs of developing countries and, where circumstances warrant, to grant appropriate preferential measures.

9. **Broadened ownership and control.** Most bilateral air service agreements allow a State which does not believe that an airline designated by the other Party is substantially owned and effectively controlled by that Party and/or its nationals to refuse to authorize its operation under the bilateral agreement. In order to assist regulators to adapt to the more dynamic environment as regards ownership, investment and industry marketing arrangements, ICAO has produced three alternatives to this traditional ownership and control criteria: 1) airline ownership and control by a group of developing countries with a community of interest and/or their nationals (developed in 1983); 2) airline ownership and control by a pre-defined group of States and/or their nationals (developed in 1994); and 3) an airline with a principal place of business, permanent residence and firm links to the designating State (developed in 1997).

10. **Ground handling arrangements.** In 1996 ICAO developed a model clause on ground handling which permits airlines to perform these services themselves (individually, for another airline or collectively) or to have access to competitive suppliers, except at airports where traffic is too small to sustain them.

V. ICAO ACTIVITIES RELATED TO AIR TRANSPORT SERVICES IN THE GATS

11. **Computer reservation systems.** Recognizing that computer reservation systems (CRSs) benefit both the air transport industry and air transport users but can also be used in abusive ways, the ICAO Council adopted a comprehensive Code of Conduct for the Regulation and Operation of Computer Reservation Systems (the ICAO Code) in 1991, which was revised and updated in 1996. Given the inclusion of CRS services in the GATS in 1995, the revised ICAO Code was co-ordinated with the WTO to ensure that the market access and exemption provisions therein were consistent with the GATS. For example, Article 12 c) of the Code permits developing countries, consistent with any bilateral or multilateral agreement to which they are parties, to delay the entry of foreign vendors into their territory until 31 December 2000. The ICAO Council also adopted model CRS clauses for use by States following the Code.

12. **Selling and marketing.** In 1997 ICAO's Council adopted three model clauses for use in air service agreements relating to these services: 1) sale and marketing of air service products; 2) conversion and remittance of earnings; and 3) bringing in and maintaining non-national personnel in the territory of a Party. These model clauses, which are for optional use, are intended to liberalize these aspects of the selling and marketing activities of the industry.

13. **Aircraft repair and maintenance.** Although Annex 8 (Airworthiness of Aircraft) to the Chicago Convention establishes important technical and safety standards relating to aircraft repair and maintenance and ICAO has also produced related standards for airworthiness, there has been no recommendation concerning the commercial aspects of this activity.

VI. CONCLUSION

14. ICAO has actively responded to the rapidly changing international air transport environment by developing guidance for its Contracting States, not only on two of the three air transport services covered by the GATS, but also on important aspects of market access. While this material is only recommendatory in nature it is being increasingly used by States making the transition to more liberalized arrangements in their air transport relationships. ICAO will continue to develop guidance on particular economic regulatory issues, such as leasing and airport slot allocation, to assist States in adjusting to the liberalization of international air transport.
